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Our File No.
38110-100

October 7, 2021

By ECF and E-Mail

Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl St.
New York, NY 10007

Re: *Kleeberg, et al. v. Eber, et al.*
Docket No. 16-cv-9517 (LAK)

Dear Judge Kaplan:

We represent Defendants in the above-captioned action. This letter is respectfully submitted, on consent of Plaintiffs, to request that the parties' post-trial proposed findings of fact and conclusions of law be filed under seal or, in the alternative, that they be provided to the Court and all parties electronically on the scheduled dates for submission and that they be filed on ECF at the time of the filing of the Plaintiffs' reply brief, or such later time as ordered by the Court.

The Court suggested to the parties on several occasions during the trial that they consider settlement. See 9/14/21 Tr. at 2:25 to 3:20; 9/15/21 Tr. at 223:24 to 224:1; 9/21/21 Tr. at 382:18 to 383:22; 9/22/21 Tr. at 526:4-7. The parties have had preliminary discussions concerning settlement. The trial record includes substantial confidential business information of the Defendants, and immediate public disclosure of this information and the parties' post-trial briefing could have an adverse effect on both settlement discussions and the competitive position of Eber-Ct. A deferral of public filing of the post-trial briefing would also advance the Court's desire to maintain the status quo, so that "[t]here ought to be a standstill mode until you either settle it or get a decision." 9/22/2021 Tr. at 535:18-19

For these reasons, we respectfully request, on consent of Plaintiffs, that either: (a) the parties file their post-trial submissions under seal, or (b) the parties initially submit their post-trial submissions electronically to the Court and all counsel on the scheduled dates for submission,

Honorable Lewis A, Kaplan
October 7, 2021
Page 2

and that they all be filed on the date of the reply brief, or on such other date as ordered by the Court.

Plaintiffs will be serving their papers later today, so we respectfully request that the Court advise the parties of its ruling on this request today if possible, but if that is not possible, request that Plaintiffs serve their submissions by email pending the Court's decision, since a sealing order or motion by Plaintiffs would be necessary to file under seal via ECF.¹

We thank the Court for its consideration of this matter.

Respectfully submitted,

s/ Kevin P. Mulry

Kevin P. Mulry

cc: All counsel (By ECF and E-mail)

¹ The parties reserve the right to request that specific portions of the filings remain under seal even after a final decision to the extent that (a) sealing is justified by sufficiently compelling concerns and (b) the court does not expressly rely on the facts to be placed under seal.